



LICENSING AND GAMBLING SUB COMMITTEE – 9TH AUGUST 2023

SUBJECT: DETERMINATION OF PREMISES LICENCE VARIATION APPLICATION

REPORT BY: LEE MORGAN LICENSING MANAGER

1. Application Details

<u>Applicant</u>	<u>Premises</u>	<u>Application Type</u>
Brew Monster Ltd	Brew Monster Unit 1, Lon y Twyn Caerphilly CF83 1NW	Variation Premises licence

1.1 Application for Variation of Premises Licence

An application has been submitted to vary the premises licence for the above premises. The proposed application for consideration is set out in 1.3 of this report.

1.2 Site Plan/Photographs

The plan of the licensed area is reproduced as **Appendix 1**.

A location plan is reproduced as **Appendix 2**.

Photographs of the Premises & outside area are reproduced as **Appendix 3**.

1.3 Proposed Trading Times and Licensable Activity

The application for the Variation of the Premises Licence seeks to permit the following Licensable Activities:

- **Supply of Alcohol (on and off sales)** Bank Holidays 09.00 to 23.00hrs & New Years Eve 09.00 to 16.00hrs

The Variation application seeks to extend the licensable area to include the brewery yard, to permit it to be opened during the hours Saturday and Sunday 09:00 to 21:00 for the consumption of alcohol purchased from the brewery bar and to permit the sale and consumption of food which is either purchased from the brewery bar or from a street food trader pop up that is based in the brewery yard.

To extend the hours the premises is open to the public and the hours for the supply of alcohol by bringing forward the opening/start time to 09:00 on bank holidays and New Years Eve to mirror weekend opening/start time. Closing times remain unchanged.

A revision of existing conditions **4, 12 and 15** concerning the smoking area and outside area and access to the brewery production area.

1.3.1 Existing Permissions

- **Supply of Alcohol (on and off sales)**

Monday to Saturday, 16:00 to 23:00
New Year's Eve, 16:00 to 02:00 the following morning

- **Late Night Refreshment (indoors only)**

New Year's Eve, 23.00 to 02.00 the following morning

- **Recorded Music (indoor only)**

Monday to Saturday, 16:00 to 23:00
New Year's Eve, 16:00 to 02:00

1.3.2 Existing Conditions

1. The designated premises supervisor will ensure that all staff are trained in their responsibilities with regard to the sale and supply of alcohol. Training records will be maintained for all members of staff and made available for inspection by any authorised officer at any reasonable time. This will include training of underage sales, drug awareness and drunk and disorderly behaviour. All such training to be updated on an annual basis, or for instances when legislation changes and should include training on how to deal with difficult customers. The training should be clearly documented and signed and dated by both the trainer and the member of staff receiving it.

2. CCTV system shall be installed. The system will be maintained in good working order and operated at all times the premises are open to the public and will continually record when licensable activities take place and for a period of two hours afterwards; the CCTV shall cover all parts of the licensed areas to which the public have access (excluding the toilets). The images shall be retained for a period of 28 days and produced to a Police Officer and any authorised officer of the Licensing Authority and as soon as is reasonably practical upon request.

The premises licence holder shall ensure that there are trained members of staff during licensed hours to be able to reproduce and download images into a removable format at the request of any authorised officer of the Licensing Authority or police officer.

3. An incident book shall be kept at the premises and maintained on site. It shall be made available on request to an authorised officer of the local authority or member of the Police. The register will record details of all crimes at the premises, complaints received of a licensing nature, any incidents of disorder, any refusal for the sale of alcohol and any visits by the emergency services.

4. Persons using the smoking shelter will not be permitted to take food or drink outside, and notices to this effect shall be displayed at suitable locations.

5. The premises licence holder shall ensure that there are sufficient litter bins and ashtrays within the vicinity of the premises to collect any waste arising from the carrying on of licensable activities and should also ensure that such receptacles are emptied when full.

6. No waste or bottles shall be moved to external areas between 23:00 and 08:00.

7. The collection of refuse, bottles and recyclable materials shall only take place between 08:00 and 18:00.

8. An approved proof of age scheme shall be adopted, implemented and advertised within the premises such as 'Challenge 25' whereby an accepted form of photographic identification shall be requested before any alcohol is sold to any person who appears to be under 25 years of age. Acceptable proof of age shall include identification bearing the customers photograph, date of birth and integral holographic mark or security measure. Suitable means of identification would include PASS approved proof of age card, photo-card driving licence and passport.

9. Publicity materials notifying customers of the operation of the Challenge 25 scheme shall be displayed at the premises, including a Challenge 25 sign of at least A5 size at the entrance to the premises and where practicable at each point of sale.

10. The premises should be cleared of customers within 30 minutes of the last supply of alcohol on any day.

11. The premises licence holder shall ensure that all drinking glasses used within the premises are of toughened or safety glass to the appropriate safety standard, in that they shall not produce sharp shards when broken.

12. Customers will not have access to the production/brewery area of the building. This area will be closed off and will only be accessible by staff using a keycode.

13. Prominent and clear notices displayed at points where clientele leave the building, instructing them to leave the premises and area quietly.

14. Recorded music will not be played in any outside area at all times on any day.

15. All alcoholic drinks will be consumed indoors within the licensed area.

16. Off-sales will be restricted to the sale of sealed packaged products (bottles, cans, 5 litre microkegs) which are intended for consumption at home.

17. No performance of striptease, lap dancing, entertainment of a sexual nature or other similar adult entertainment will be permitted on the premises.

18. The premises licence holder shall ensure participation in any Pub Watch or similar scheme operating in the locality of the licensed premises.

1.3.3 The following steps have been volunteered by the applicant as part of the Operating Schedule, to promote the Licensing Objectives, and are reproduced directly from the Application:-

None Provided.

1.4 RELEVANT CONSIDERATIONS

Caerphilly County Borough Council Licensing Policy **Appendix 4**

National Guidance **Appendix 5**

1.5 RELEVANT REPRESENTATIONS RECEIVED DURING APPLICATION PROCESS

1.5.1 Responsible Authorities:

Police

Document	Date Received	Appendix Reference
Initial Representation	6 th July 2023	Appendix 6

Environmental Health Pollution

Document	Date Received	Appendix Reference
Initial Representation	17 th July 2023	Appendix 7

Licensing Authority in role as Responsible Authority

Document	Date Received	Appendix Reference
Initial Representation	13 th July 2023	Appendix 8

Environmental Health (Health & Safety)

Document	Date Received	Appendix Reference
Initial Representation	19 th July 2023	Appendix 9

South Wales Fire and Rescue Service responded to indicate that they would inspect the premises under their own powers and had no representations to make at this time. The Child Protection Officer responded to confirm that there were no representations in relation to the application.

1.5.2 Other Persons:

Residents

Document	Date Received	Appendix Reference
Resident K Jordan Representation	26 th June 2023	Appendix 10
Resident M Butler Representation	17 th July 2023	Appendix 11
Resident B Brown Representation	17 th July 2023	Appendix 12
Resident P Brown Representation	17 th July 2023	Appendix 13

1.6 SUMMARY OF REPRESENTATIONS

The Environmental Health Pollution Officer details an objection to the application to vary Brew Monster premises licence to include the use of the 'Brewery Yard' and its associated conditions. No objection was made to the extension of hours (On New Year's Eve or Bank Holidays.)

The Officer detailed concerns over the use of the outside areas, whether this is attributed to use of the rear yard as a brewery yard or as a smoking area. Reference is made that since opening, Brew Monster have been the subject of many noise nuisance complaints, one of which is ongoing to assess whether noise from the use of outside areas by patrons was causing a statutory nuisance to nearby residents.

Reference is made to evidence gathered with noise recordings and officer visits, that are indicative of noise disturbances from use of the outside area as a smoking area. Noise recordings have been submitted by a resident using The Noise App, which identify a noise source with patrons in loud conversation, often shouting and likely socialising.

The Environmental Health Officer provided information in respect of visits made by Environmental Health Officer's to a residents premises made on 24th June 2023 and 1st July 2023 which resulted in the following Officer comments "*I didn't witness prolonged noise from patrons, but there would be potential for nuisance if patrons were outside Brew Monster for a length of time and the neighbours were trying to use/enjoy their garden area.*".

"At no point did I note anyone from the premises taking any action to mitigate the varying volume patron noise or ask for them to quieten down and this was pretty much continuous for the just over 20 minutes..."

Reference is made to the need for enforcement action to control use of the outside area and meetings held in April this year.

The Environmental Health Pollution Officer concluded that in his professional opinion based on what had been proposed, the ongoing noise complaints and the existing management of Brew Monster, it was not felt that the licensing objective for the Prevention of Public Nuisance could be promoted.

Representations have been received from Heddlu Gwent Police. The Police do not object to the variation application submitted, their comments detail a lack of complaints in respect of crime and disorder and Antisocial behaviour between June 2022 – July 2023. The Police have advocated a revision of conditions in relation to CCTV coverage to include the front entrance and whole of rear yard. Furthermore, the Police have proposed conditions in respect of the use of toughened glass and increased numbers of staff to be present for pre-planned events and have advocated that the licence holder risk assess the need for SIA security staff when sporting or function of any kind takes place. The Applicant has responded to accept the proposed Police conditions.

The Licensing Authority in its role as a Responsible Authority has objected to the revision of conditions to permit alcohol to be consumed in the outside area. Although no objection is made to the additional hours sought on New Year's Eve or on Bank Holidays.

Comment was expressed following a visit on the 27th April 2023 in relation to Temporary Event Notices submitted where a concern was raised regarding the monitoring of the premises as there was no direct access to the yard from the premises itself with customers having to walk via a public footpath to gain access to the yard following their purchases of alcohol.

Comment was expressed that the applicant had not included within the application submitted, any measures in relation to the control and management of the area and number of staff that would be on site when this outside area is open. Reference was made to previous discussions and taking into consideration the layout of the premises, that the Licensing Authority would have expected the applicant to have had regard to this and included measures within his operating schedule.

In addition, as there was no direct access to the brewery yard from the premises and with the lack of CCTV within the public footpath area, there were concerns regarding the management of both areas and the difficulties/controls that may occur with customers not staying within the licensed areas and spilling onto the adjoining street.

Reference was made to paragraphs 11.2 and 26.2 of the council's statement of licensing policy in consideration of the local area considerations.

Taking into consideration the above, the Licensing Authority in its role as a responsible authority was not confident that the premises licence holder would be able to promote the licensing objectives in relation to the use of the brewery yard and would likely to continue to cause nuisance to residents.

The Environmental Health (Health & Safety) Officer has advocated a number of measures in respect of public safety. Comment is expressed that these areas can be addressed by the applicant undertaking a suitable and sufficient risk assessment and adopting the necessary controls to safeguard, employees, customers and others.

Resident Ms Jordan on behalf of her mother, details an objection to the application on the basis of disruptive noise, smoke and odour and litter. Reference is made to an occasion where a

temporary licence was obtained which resulted in 30 plus persons talking outside which resulted in her mother being unable to sit in her garden. Comment is expressed about the loss of enjoyment and use of the garden. Further concern is raised in relation to cigarette smoke and food odour when the beer garden area was used. Comment is made in relation to alleged comments made by the applicant encouraging her mother to bring concerns to the attention of the licensee as opposed to the council.

Resident Mr Butler references patron noise being experienced which is attributable to Brew monster. This takes place on the footpath and road outside during and after the conclusion of its permitted trading hours. This has negatively impacted upon the use of their garden and home, making the garden a 'no go' area. It is stated that allowing use of the outdoor area would make things worse. Reference is made to complaints made to the council's out of hours service in relation to noise.

Resident Mr Brown references noise from patrons who congregate on the road and path outside the premise to smoke and talk and noise from. Reference is made to the curtailment of his garden area and a need to close windows.

Resident Mrs Brown details her objection to the application and details her close proximity to the applicant's premises. Comment is made concerning the applicant being a most inconsiderate business operator. Reference is made to the premises being a noisy hub most weeks from Thursday to Saturday where patrons noisily congregate meaning that they cannot enjoy their garden. Comment is expressed that Brew monster should confine themselves to the internal use of their premises not to increase noise levels. Reference is made to Brew Monster customers urinating on residents' garden walls and fears if additional permissions are granted.,

1.7 APPLICANT RESPONSE

The applicant has acknowledged receipt of the Police representations and has agreed to the proposed Police conditions. Furthermore, the applicant has agreed to the recommendations suggested by the Council's Environmental Health (Health & Safety) Officer.

The applicant requested a meeting with the Environmental Health Pollution Team Officer and the Licensing Authority in its role as a responsible authority to attempt to mediate the variation application. It is understood that following this meeting the concerns and objections to the use of the outside area from both the Responsible Authorities remain.

1.8 LICENSING ASSESSMENT

The Licensing Assessment is a provisional summary, based on representations received prior to the hearing. The Head of Public Protection, Community and Leisure Services reserves the right to amend or vary the provisions contained in the summary and recommendation, subject to any change in the material facts that become known at the hearing. The Sub-Committee is obliged to determine this application with a view to promoting the licensing objectives which are:

- The prevention of crime and disorder.
- Public safety.
- The prevention of public nuisance.
- The protection of children from harm

In making its decision, the Sub Committee is obliged to have regard to: -

- Licensing Act 2003
- Statutory Guidance issued under S182 of the Licensing Act
- The Council's own licensing policy, and
- All representations made and evidence presented.

NOTE: The Sub-Committee may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. Any such actions must be necessary in order to promote the licensing objectives.

Statutory Power - Licensing Act 2003. This is a Council function which is delegated to this committee to decide.

1.9 OBSERVATIONS

This application relates to the variation of an existing premises licence at Brewmonster, 1 Lon y Twn, Caerphilly. The application effectively seeks to revise existing conditions of licence which limits on sales of alcohol to indoors only, by permitting the use of an outdoor beer garden area to the side of the premises. The application also seeks to extend permitted hours on New Years Eve 09.00 to 16.00hrs i.e., until existing hours permitted and on Bank Holidays 09.00 to 23.00hrs.

Objections to the variation application have been received from Responsible Authorities namely the Environmental Health Pollution Team and Licensing Authority in its role as a responsible authority during the statutory 28-day consultation period. However, these objections appear solely to relate to the revision of conditions to permit alcohol to be consumed in the outside area and not in relation to increased sale of alcohol hours proposed on New Years Eve and Bank Holidays.

Clarification has been sought from Responsible Authorities that their objections relate to a revision to existing conditions numbers 4 and 15 of the premises licence and not in relation to condition 12 in relation to preventing customer access to the production area.

Resident representations have also been received objecting the application. Clarification has been sought with resident objectors, as to whether their objections relate to the new hours proposed on New Years Eve and Bank Holidays' or just the use of the outside area. One of the residents, Ms Jordan has indicated that her mother's objections relate to the use of the outside area only, as there has been no disturbance when patrons remain inside. Mr Butler has indicated that he objects to both aspects i.e., the proposed new hours and the revision of conditions to permit use of outside area.

Members will note that they are only able to consider the variation application that has been applied for in respect of revised conditions and additional hours at New Year and on Bank Holidays' and not the merits of the existing licence held.

The Environmental Health Pollution Officer has expressed his professional opinion based on what has been proposed by the applicant, ongoing noise complaints and the existing management of Brew Monster. The Officer concluded that it was not felt that the licensing objective for the

Prevention of Public Nuisance could be promoted. The Officer highlights recent Environmental Health Officer monitoring on the 24th of June and 1st July 2023 which suggests that the prevention of the public nuisance could be undermined, and that patron noise was not being adequately managed.

Members will be aware of the Section 182 Home Office National Guidance, in particular Paragraph 9.12 which states -

'Each responsible authority will be an expert in their respective field, and in some cases, it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.'

The Licensing Authority in its role as a responsible authority, commented that the applicant had not included within the application submitted any measures in relation to the control and management of the outside area and number of staff that would be on site when the outside area was open. Reference was made to previous discussions with the applicant, consideration of the layout of the premises and that the Licensing Authority would have expected the applicant to have had regard to this and included such measures within its operating schedule.

Paragraph 26.2 of the Council's Statement of Licensing policy advocates the following *'In completing an operating schedule, applicants are expected to have regard to this statement of licensing policy and to demonstrate suitable knowledge of their local area when describing the steps that they propose to take in order to promote the Licensing Objectives.'*

Both the Environmental Health and Licensing Officer highlighted Paragraph 11.1 of the Council's statement of Licensing Policy which states *'Licensed premises have significant potential to impact adversely on persons living and working (including those carrying on business) in the area around the premises, and also further afield through public nuisances that arise from their operation. It is therefore important that in considering the promotion of this licensing objective, Licensing Authorities and Responsible Authorities focus on the effect of the licensable activities at the specific premises on these parties which may be disproportionate and unreasonable.'*

The position of the Environmental Health Pollution and Licensing Officer in its role as a responsible authority suggests that the application to revise conditions which would permit patrons to consume alcohol in the outside beer yard could have significant potential to impact adversely on persons living in the area around the premises. This position appears to be supported by the position of local residents who have referred to patron noise levels, the result of which making their gardens a no-go area. This appears to be the case both when the beer yard has been utilised under the auspices of a Temporary Event Notice (TEN) or when the premises trades within its existing permissions. Members will note that there were no

Temporary Event Notices (TEN's) in place on the dates referenced by the Environmental Health Officer.

It is noted both by Responsible Authorities and residents that when Temporary Events have been held or if conditions were revised to permit alcohol to be consumed in the outdoor area that patrons have to enter the public highway, along the path and into the proposed beer yard. There is no other form of access to this area available to patrons. The management of persons walking to and from and control of persons in this area appears to be of concern, should the variation application be approved. Members may have concerns in relation to the position of the proposed beer yard and layout of the premises which does not appear to afford the applicant or his staff much of a view from the bar area into the beer yard in order to assist in its management and control.

Whilst the Police have indicated a lack of complaints in respect of the prevention of crime and disorder and antisocial behaviour, Members will note Paragraph 1.4 of the Section 182 Home Office National Guidance which details the following '*Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.*'

Whilst the position in respect of the revision of conditions and use of outside area appears to be contentious and opposed by Responsible Authorities and residents alike. This is not the position in respect of the increased retail sale of alcohol hours sought at New Year and on Bank Holidays.' There is no objection to the same from Responsible Authorities and from one of the resident objectors to these hours. The resident comments that in her instance "there has been no disturbance when patrons remain inside." However, another resident comments that patrons remain outside on the road and path often after the cessation of permitted hours.

Members are guided to advice offered in relation to hours within the Section 182 Home Office National Guidance Paragraph 10.14 which states:

'Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.'

Whilst the main thrust of the resident objections appears to relate to noise from patrons attributed to the premises. Reference is also made to customers of the premises urinating on residents' garden walls and the absence of such incidents prior to the premises opening. Concern is expressed about the ability to permit outside events which it is feared will increase nuisance that is attributed to the premises. Reference is made by one of the residents to the applicant being an inconsiderate business owner.

In relation to any references to Planning by residents as part of this Licensing Act 2003 application process, Paragraphs 17.11 of the Council's Statement of Licensing policy provides guidance to Members as the two regimes are separate entities and states '*The Licensing Authority is not bound by decisions made by the Planning Committee and vice versa.*'

Members will be required to determine whether variation application to revise the existing licence conditions in relation to the outside area, to add the outside area to the licensable area and the proposed increase to permitted retail sale of alcohol hours will undermine the licensing

objectives namely the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

1.10 **RECOMMENDATION**

Having had regard to and considered the position of the Responsible Authorities and representations received by other parties, it is recommended that the variation application to **revise licence conditions numbers 4 & 15 that would permit alcohol to be consumed in the outside brewery yard area be refused.** It is not considered that the promotion of the Licensing Objectives may be adequately controlled or mitigated by revised conditions in this instance.

In reaching this conclusion, it is noted that there are objections to the prevention of public nuisance licensing objective from the Environmental Health Pollution Team and Local Authority in its role as a response Authority, together with local residents.

It is considered that **condition 12 of the premises licence can be revised** to reflect the following wording *'Customers will not have access to the production/brewery area of the building. This area will be closed off and suitable signage erected.'*

In relation to the **additional hours** proposed on New Years Eve and Bank Holidays,' it is noted that there is an absence of objections by the Responsible Authorities. It is suggested that this element of the application can be **approved.**

Background Papers:

Links to;

[Revised guidance issued under section 182 of the Licensing Act 2003 \(December 2022\)](#)

[Caerphilly CBC Statement of Licensing Policy](#)

Date of this report: 2nd August 2023

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